



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 23-02203
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Aubrey M. De Angelis, Esquire, Department Counsel

For Applicant:
Pro se

05/28/2024

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant failed to mitigate security concerns under Adjudicative Guideline F (Financial Considerations). Based upon a review of the testimony of Applicant and his witness and the documentary evidence in the record, national security eligibility for access to classified information is denied.

Statement of the Case

The U.S. Department of Defense (DoD) issued a report, dated February 14, 2022, in connection with Applicant’s continued eligibility for access to classified information indicating that as of January 20, 2022, Applicant had 13 delinquent debts totaling \$64,193. On November 9, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Adjudicative Guideline (AG) F. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within*

Industry (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the National Security Adjudicative Guidelines effective within DoD after June 8, 2017.

On February 20, 2024, Applicant answered the SOR in writing (Answer). He admitted all 13 allegations set forth in the SOR. He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on March 14, 2024. The case was assigned to me on April 3, 2024. DOHA issued a Notice of Video Teleconference Hearing on April 17, 2024. The case was heard on May 6, 2024, as scheduled.

The Government presented four documents marked as Government Exhibits (GE) 1 through 4. Applicant and a co-worker testified. Applicant also offered two sets of documents, which were marked as Applicant Exhibits (AE) A and B. I admitted all of the parties' exhibits without objection. DOHA received the transcript of the hearing (Tr.) on May 13, 2024. (Tr. at 10-12, 13-15.)

Findings of Fact

Applicant is 44 years old. He earned a bachelor's degree in 2004. He is engaged to marry, and he and his fiancée have two children, ages 2 and 5. Applicant applied for and was granted a security clearance in 2015. He initially worked as an assembler for a U.S. Government contractor. He has continued with that company since then and in 2019 he was promoted to be a manager and a security officer. He is seeking to retain his national security eligibility in connection with his employment. (Tr. at 17-19, 20; GE 1 at 5, 9-10, 16.)

The Government alleged in the SOR that Applicant is ineligible for clearance because he is financially overextended with delinquent debts and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. The SOR identifies 13 delinquent debts totaling about \$55,000. (Answer at 1-3; GE 2; GE 3; GE 4.)

Applicant had no delinquent debts in 2015 when he first applied for a security clearance. Since the COVID-19 pandemic, Applicant has experienced significant financial problems. Pandemic restrictions limited the amount he worked in 2020 as an hourly employee and resulted in the loss of income. His fiancée has been able to earn only a modest annual income due to her responsibilities with the couple's children. Their oldest child has been diagnosed with significant disabilities. Applicant regularly incurs expenses to provide for the child's care. To save money, his fiancée and their children live with her parents. Applicant typically spends his free time with his fiancée and their children and then goes to his parent's home to sleep. He is the sole provider for his family and helps both his fiancée's parents and his parents by paying some household expenses. His income has grown since 2020, and he hopes to make even more in 2024, which will

relieve some financial pressure and give him the ability to begin to pay some of his debts. Also, Applicant has recently paid off a consolidation loan he took out in the approximate amount of \$23,000 to pay his fiancée's debts. The monthly payments were \$451. As a result of his payoff of the loan, he has more funds available every month to repay his debts. (Tr. at 20-22, 26-28, 32-33, 38-41; GE 1 at 27-29; AE B.)

The debts alleged in the SOR are mostly credit-card accounts that he has been unable to pay since about 2019 or 2020. The debts were incurred because his income was insufficient to pay for his family's living expenses. He has lived paycheck-to-paycheck for the past few years and the credit-card debts were accumulated to help pay his family's living expenses. He believes that his employer will increase his salary this year to help him better afford his expenses. His current income is about \$69,000 for the full calendar year. At this time, all but two delinquent debts listed in the SOR remain outstanding. (Tr. at 22-24.)

The unresolved SOR debts are: 1.a (\$15,751); 1.b (\$8,938); 1.c (\$5,941); 1.d (\$5,729); 1.e (\$4,754); 1.f (\$3,765); 1.g (\$3,430); 1.h (\$2,317); 1.k (\$554); 1.l (\$545); and 1.m (\$481). These delinquencies are all credit-card accounts. In February 2024, Applicant resolved two debts with partial payments, 1.i (\$1,923) and 1.j (\$1,066). He resolved these debts with payments of \$480.66 and \$266.70, respectively. He does not believe he owes anything further on either debt. (Tr. at 25-31, 42-43; AE A.)

Since the issuance of the SOR in November 2023, several of Applicant's other financial obligations have become delinquent. He lives paycheck-to-paycheck and sometimes cannot pay certain bills. He believes he owes a total amount of about \$70,000. He is making more money this year and hopes to begin reducing his debts. Applicant tried to work with debt-relief companies in the past, but he found that their proposed payment plans and fees for all of his debts were more than he could afford. He hopes to be able to resolve some of his debts with payment plans organized by a debt-relief company later this year or in the future. (Tr. at 26, 31-32, 36-37.)

Whole-Person Evidence

Since 2015, Applicant's character witness has worked with Applicant and at this time they share two jobs at their company. The witness praised Applicant's integrity and work ethic. He described Applicant as the "number one employee at the company." He testified that Applicant is "the one employee that we can count on." He also testified that Applicant will retain his job performing other functions if he is denied eligibility for a security clearance. (Tr. at 46-52.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

The SOR alleged that Applicant owed approximately \$55,000 for the 13 delinquent debts. The Government's credit reports in the record and Applicant's admissions in the Answer establish the existence of these debts and the applicability of the above potentially disqualifying conditions. Accordingly, the burden shifts to Applicant to mitigate security concerns under Guideline F.

The guideline includes five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's financial difficulties:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Mitigation under AG 20(a) and (b) has not been established. The debts are recent, numerous, and could recur unless Applicant's financial situation significantly improves. His numerous unresolved debts cast doubt upon his current reliability, trustworthiness, and good judgment. Some of the circumstances that caused Applicant to incur delinquent debt were beyond his control, but with the exception of two small debts, he has not addressed his delinquencies in a responsible manner.

The three remaining mitigating conditions quoted above are not applicable under the facts of this case. Overall, Applicant has not mitigated the security concerns raised under Guideline F.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have considered the testimony of Applicant's

character witness. However, Applicant's failure to address all but two of the 13 SOR debts at this point weighs heavily against his present suitability for national security eligibility and a security clearance. Applicant has not mitigated the financial considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.h:	Against Applicant
Subparagraphs 1.i and 1.j:	For Applicant
Subparagraphs 1.k through 1.m:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON
Administrative Judge